

---

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH

---

MARK F. BURTON, SR., as Trustee of the  
BRENDA H. BURTON TRUST; MARK F.  
BURTON, individually; and BRENDA H.  
BURTON, individually,

Movants,

v.

UNITED STATES SECURITIES AND  
EXCHANGE COMMISSION,

Respondent.

MEMORANDUM DECISION AND  
ORDER RE: MOVANTS' MOTION FOR  
AN ORDER PURSUANT TO THE  
FINANCIAL PRIVACY ACT OF 1978

Case No. 2:17-CV-395 TS

District Judge Ted Stewart

---

This matter is before the Court on Movants' Motion for Order Pursuant to Customer Challenge Provisions of the Right to Financial Privacy Act of 1978. For the reasons discussed below, the Court will order the United States Securities and Exchange Commission ("SEC") to file a response in accordance with 12 U.S.C. § 3410(b).

On April 25, 2017, the SEC filed three subpoenas seeking access to Movants' financial records from Zions Bank. Within ten days of service, Movants filed the instant motion under 12 U.S.C. § 3410 to quash the subpoenas. Section 3410(a) provides that "[w]ithin ten days of service . . . a customer may file a motion to quash." Further,

Such motion or application shall contain an affidavit or sworn statement (1) stating that the applicant is a customer of the financial institution from which financial records pertaining to him have been sought; and (2) stating the applicant's reasons for believing that the financial records sought are not relevant to the legitimate law enforcement inquiry stated by the Government authority in its notice, or that there has not been substantial compliance with the provisions of this chapter.<sup>1</sup>

---

<sup>1</sup> 12 U.S.C. § 3410(a).

If an applicant complies with subsection (a), the court “shall order the Government authority to file a sworn response, which may be filed in camera if the Government includes in its response the reasons which make in camera review appropriate.”<sup>2</sup> Upon receiving the Government’s response, the Court shall decide Movant’s motion “within seven calendar days of the filing of the Government’s response.”<sup>3</sup>

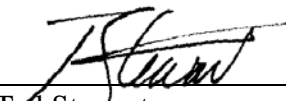
The Court finds that Movants have complied with Section 3410(a). Movants timely filed their motion and attached affidavits stating that Movants are customers of Zions Bank and believe the financial records sought are not relevant because Movants do not have, nor have ever had, any interest in, ownership of, or any business or financial connection to Private Placement Capital Notes II, LLC, the entity under investigation by the SEC. Further, Movants properly served their motion on the SEC.

It is therefore

ORDERED that Respondent United States Securities and Exchange Commission shall file a sworn response in accordance with 12 U.S.C. § 3410(b) within fourteen (14) days of this Order. Movant is directed to serve a copy of this Order on the SEC and file proof of service with the Court.

DATED this 16th day of May, 2017.

BY THE COURT:

  
\_\_\_\_\_  
Ted Stewart  
United States District Judge

---

<sup>2</sup> *Id.* § 3410(b).

<sup>3</sup> *Id.*